

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD**

**CENTER FOR INDIVIDUAL
FREEDOM, INC.,**

Plaintiffs,

v.

**WEST VIRGINIANS FOR LIFE, INC.
and ZANE LAWHORN,**

Consolidated Plaintiffs,

v.

**Civil Action No. 1:08-cv-00190 (Lead)
Civil Action No. 1:08-cv-01133
Honorable Thomas E. Johnston**

**NATALIE E. TENNANT,
West Virginia Secretary of State,
TIMOTHY D. BOGGESE,
Mercer County Prosecuting Attorney,
and GARY A. COLLIAS,
WILLIAM N. RENZELLI,
ROBERT RUPP, and
CINDY SMITH, in their official
capacities as members of the West
Virginia State Election Commission,**

Defendants.

WITHDRAWAL OF MOTION TO DISMISS

COMES NOW, Defendant, Timothy D. Boggess ("Mr. Boggess"), by counsel, Preservati Law Offices, PLLC, and for his Withdrawal of Motion to Dismiss, states as follows:

1. Mr. Boggess filed his Motion to Dismiss in this matter on February 14, 2011 based upon the fact that he resigned his position as Mercer County Prosecuting

Attorney, effective December 31, 2010. Mr. Scott Ash replaced Mr. Boggess as the Mercer County Prosecutor effective January 1, 2011.

2. This Court has previously determined that when a public official is named in their official capacity as a party to a lawsuit, and that individual then leaves their position as a public official, the individual that assumes the public official position shall be substituted in as the proper party.

3. Therefore, because Mr. Scott Ash has replaced Mr. Boggess as the Mercer County Prosecuting Attorney, he will replace Mr. Boggess as the named party in this matter. Since Mr. Boggess is no longer a proper party to this matter, he hereby withdraws his previously filed Motion to Dismiss,

WHEREFORE, Mr. Boggess respectfully withdraws his Motion to Dismiss in the instant case.

Respectfully submitted,

TIMOTHY D. BOGGESS,
By Counsel,

s/ Nicholas S. Preservati

Nicholas S. Preservati (W.Va. Bar #8050)

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Counsel for Defendant Timothy D. Boggess

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CERTIFICATE OF SERVICE

I, Nicholas S. Preservati, do hereby certify that on May 10, 2011, I have served a true and exact copy of the foregoing **Withdrawal of Motion to Dismiss**, upon all counsel of record by filing with the Court using CM/ECF which will send notification of such filing to the following CM/ECF participants:

William C. Porth, Esq.
Email: wcp@ramlaw.com

Patrick K. Maroney, Esq.
Email: pmaroney@mwwplaw.com

Thomas W. Kirby, Esq.
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James Bopp, Jr., Esq.
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Teresa C. Toriseva
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Shirley J. Stanton, Esq.
Email: gstanton@ma.rr.com

And on the same date, by U.S. mail, postage prepaid, to the following non-CM/ECF participants:

Robbin Stewart
P. O. Box 29164
Cumberland, IN 46229-0164

s/ Nicholas S. Preservati
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